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**Pro hac vice* application forthcoming

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

In re Application of

FOURWORLD EVENT
OPPORTUNITIES, LP and GENESIS
EMERGING MARKETS INVESTMENT
COMPANY

Petitioners, for an Order Pursuant to 28
U.S.C. § 1782 to Conduct Discovery for
Use in a Foreign Proceeding.

Case No. 22-

**MEMORANDUM OF LAW IN
SUPPORT OF THE
APPLICATION FOR AN ORDER
OF JUDICIAL ASSISTANCE
PURSUANT TO 28 U.S.C. § 1782**

TABLE OF CONTENTS

<u>APPLICATION</u>	1
<u>FACTUAL BACKGROUND</u>	3
<u>A. Parties to the Foreign Proceeding</u>	3
<u>B. The Merger</u>	4
<u>C. Petitioners’ Cayman Islands Appraisal Proceeding</u>	7
<u>D. Discovery in the Cayman Islands Appraisal Proceeding</u>	7
<u>E. Respondent and the Discovery Sought</u>	8
<u>ARGUMENT</u>	9
<u>I. The Application Satisfies the Three Statutory Requirements of 28 U.S.C. 1782</u>	10
<u>A. Respondent “Resides” or Is “Found in” this District</u>	10
<u>B. The Discovery Sought Is “For Use” In a Foreign Proceeding</u>	11
<u>C. Petitioners Are “Interested Persons.”</u>	11
<u>II. The Intel Discretionary Factors Weigh in Favor of Granting Discovery.</u>	12
<u>A. Respondent Is a Non-Participant in the Appraisal Proceeding</u>	12
<u>B. The Cayman Islands Court Is Receptive to the Requested Discovery</u>	13
<u>C. Petitioners Are Not Circumventing Foreign Proof-Gathering Restrictions</u>	14
<u>D. The Subpoena Is Not Unduly Burdensome.</u>	15
<u>CONCLUSION</u>	17

TABLE OF AUTHORITIES

Cases

<i>Ahmad Hamad Algosaibi & Bros. Co. v. Standard Chartered Int’l (USA) Ltd.,</i>	
785 F. Supp. 2d 434 (S.D.N.Y. 2011)	13
<i>Brandi-Dohrn v. IKB Deutsche Industriebank AG,</i>	
673 F.3d 76 (2d Cir. 2012)	13
<i>Euromepa, S.A. v. R. Esmerian, Inc.,</i>	
51 F.3d 1095 (2d Cir. 1995)	12, 15
<i>Facebook, Inc. v. Banana ADS LLC,</i>	
No. CV 11–03619–YGR (KAW), 2013 WL 1873289 (N.D. Cal. Apr. 30, 2013)	10
<i>Gushlak v. Gushlak,</i>	
486 F. App’x 215 (2d Cir. 2012)	13
<i>HRCHainan Holding Co., LLC v. Yihan Hu,</i>	
No. 19-mc-80277-TSH, 2020 WL 906719 (N.D. Cal. Feb. 25, 2020) .	14
<i>In re Accent Delight Int’l Ltd.,</i>	
869 F.3d 121 (2d Cir. 2017)	10
<i>In re Application of Athos Asia Event Driven Master Fund,</i>	
No. 1:21-MC-00208-GBF, ECF 8 (S.D.N.Y. Mar. 3, 2021)	13
<i>In re Application of Athos Asia Event Driver Master Fund,</i>	
No. 4:21-MC-00153-AGF, 2021 WL 1611673 (E.D. Mo. Apr. 26, 2021)	13
<i>In re Bayerische Motoren Werke AG,</i>	
No. MC-22-00016-PHX-SPL, 2022 WL 1092804 (D. Ariz. Apr. 12, 2022)	14
<i>In re Credit Suisse Virtuoso SICAV-SIF in Respect of Sub-Fund Credit Suisse (Lux) Supply Chain Fin. Fund,</i>	
No. MC-21-00051-PHX-DWL, 2022 WL 1265919 (D. Ariz. Apr. 28, 2022)	9
<i>In re del Valle Ruiz,</i>	
939 F.3d 520 (2d Cir. 2019)	10
<i>In re Ex Parte Appl. Varian Med. Sys. Int’l AG,</i>	
No. 16-mc-80048-MEJ, 2016 WL 1161568 (N.D. Cal. March 24, 2016)	12
<i>In re Ex Parte Application of Ambercroft Trading Ltd.,</i>	
No. 18-MC-80074-KAW, 2018 WL 2867744 (N.D. Cal. June 11, 2018)	13

1	<i>In Re Ex Parte Application of Nouvel, LLC,</i>	
2	No. 22-MC-0004-MCS(EX), 2022 WL 3012521 (C.D. Cal. June 8,	
3	2022), <i>report and recommendation adopted</i> , 2022 WL 2901715 (C.D.	
4	Cal. July 22, 2022).....	14
5	<i>In Re FourWorld Event Opportunities, LP,</i>	
6	No. 21-mc-00283-RGA, ECF No. 5 (D. Del. July 23, 2021)	2
7	<i>In re Koninklijke Philips N.V.,</i>	
8	No.: 17-MC-1681-WVG, 2018 WL 620414 (S.D. Cal. Jan. 30, 2018) 13	
9	<i>In re Nouvel, LLC,</i>	
10	No. 2:22-MC-00004-MCS-E, 2022 WL 2901715 (C.D. Cal. July 22,	
11	2022).....	12
12	<i>In re Penner,</i>	
13	2017 WL 5632658 (D. Mass. Nov. 22, 2017).....	13
14	<i>In re Pioneer Corp. v. Technicolor, Inc.,</i>	
15	No. LA CV18-04524 JAK (SSx), 2018 WL 4961911 (C.D. Cal. Sept.	
16	12, 2018).....	11
17	<i>In re PJSC Uralkali for an Ord. Pursuant to 28 U.S.C. § 1782,</i>	
18	No. C18-1673JLR, 2019 WL 291673 (W.D. Wash. Jan. 23, 2019)	9
19	<i>In re Platinum Partners Value Arbitrage Fund L.P.,</i>	
20	583 B.R. 803 (Bankr. S.D.N.Y. 2018)	13
21	<i>In re Republic of Ecuador,</i>	
22	No. C-10-80225, 2010 WL 3702427 (N.D. Cal. Sept. 15, 2010)	12
23	<i>In re Request for Judicial Assistance from the Seoul Dist. Criminal Court,</i>	
24	555 F.2d 720 (9th Cir. 1977).....	10
25	<i>In re Wireless Facilities, Inc. Derivatives Litig.,</i>	
26	562 F. Supp. 2d 1098 (S.D. Cal. 2008).	10
27	<i>Intel Corp. v. Advanced Micro Devices, Inc.,</i>	
28	542 U.S. 241 (2004)passim	
	<i>Siemens AG v. W. Digital Corp.,</i>	
	No. 8:13-cv-01407-CAS-(AJWx), 2013 WL 5947973 (C.D. Cal. Nov.	
	4, 2013).....	12, 13
	<i>Stockinger v. Toyota Motor Sales, U.S.A., Inc.,</i>	
	No. 18MC00084VAPK SX, 2018 WL 6517106 (C.D. Cal. Aug. 15,	
	2018).....	14
	<i>TS Prod., Inc v. Champion Fiberglass, Inc.,</i>	
	309 F.R.D. 527 (N.D. Cal. 2015)	15
	<i>Universal Church, Inc. v. Standard Constr. Co. of San Francisco, Inc,</i>	
	No. 14-CV-04568-RS (KAW), 2015 WL 6167968 (N.D. Cal. Oct. 21,	
	2015).....	15

Statutes

28 U.S.C. § 1782passim

1 **I. APPLICATION**

2 Petitioners respectfully submit this Application pursuant to 28 U.S.C. § 1782 to take
3 limited discovery from entities found in this District for use in connection with an
4 appraisal proceeding filed in the Grand Court of the Cayman Islands (the “**Cayman**
5 **Court**”) on November 10, 2020 (the “**Appraisal Proceeding**”). In the Appraisal
6 Proceeding, Petitioners (along with other dissenting shareholders) seek a determination
7 of the fair value of their former shareholdings in 58.com (“**58.com**” or the “**Company**”),
8 a Cayman Islands company that was delisted from the New York Stock Exchange, and
9 taken private on September 17, 2020. Petitioners’ shares were forcibly canceled through
10 a \$8.7 billion merger orchestrated by the Company’s CEO and several private-equity
11 funds (the “**Merger**”).

12 In the Appraisal Proceeding, Petitioners and other dissenting shareholders will assert that
13 the Merger was coercive and fundamentally unfair to minority shareholders, with respect
14 to both the Merger price, which significantly undervalued 58.com’s shares, and the
15 process to approve the Merger. Through this Application, Petitioners seek to take the
16 deposition of Alex Nanyan Zheng (“**Respondent**”), a director of Ocean Link GP, one of
17 the members of the Buyer Group in the Merger. Mr. Zheng has knowledge that is relevant
18 to the Appraisal Proceeding, in which the Cayman Court will examine both the fairness
19 of the Merger consideration and also the process undertaken by the Company to approve
20 the Merger.

21 Section 1782 authorizes this Court to order discovery from any person that resides or is
22 found in this district to assist with proceedings before foreign tribunals. Petitioners’
23 Application meets all of the statutory requirements of Section 1782 (i) Respondent
24 “resides or is found” in this District; (ii) the Requested Discovery is “for use” in a foreign
25 proceeding, namely the Appraisal Proceeding; and (iii) Petitioners, each of which is a
26

1 party to the Appraisal Proceeding, easily meet the standard for an “interested person”
2 under the statute. In addition, each of the Supreme Court’s factors that guide this Court’s
3 exercise of discretion under Section 1782 weighs decisively in favor of granting
4 Petitioners’ Application. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241,
5 264 (2004) (“*Intel*”).
6

7 *First*, Petitioners seek discovery from a “nonparticipant” in the foreign action. *Id.*
8 Respondent is not a party in the Appraisal Proceeding or otherwise subject to the
9 jurisdiction of the Cayman Court. This is a sufficient basis for the Court to hold that the
10 first factor is satisfied.
11

12 *Second*, there is no indication, let alone the required “authoritative proof,”
13 suggesting that the Cayman Court might be unreceptive to Section 1782 assistance. *Id.*
14 To the contrary, as established in the expert declaration of Justice Ingrid Mangatal (Ret’d)
15 submitted in related Section 1782 proceedings, (1) Petitioners *prima facie* have the right
16 to gather evidence pursuant to Section 1782 to the Cayman Court in support of their
17 claims, and (2) admissibility of such evidence will be judged by the same know threshold
18 of relevance and narrow exclusionary rules applicable to all other evidence presented to
19 the Court. No court in the Cayman Islands considering an appraisal application has ever
20 excluded evidence because it obtained using Section 1782.¹
21
22

23 Indeed, the Directions Order from the Grand Court in the Appraisal Proceeding
24 specifically contemplates that the parties will use Section 1782 to obtain evidence for use
25

26
27 ¹ Justice Mangatal’s declaration was submitted as part of applications in related Section
28 1782 proceedings for discovery in connection with the Appraisal Proceeding at issue here,
including in *In Re FourWorld Event Opportunities, LP*, No. 21-mc-00283-RGA, ECF No.
5 (D. Del. July 23, 2021) (“**Mangatal Decl.**”).

1 in that proceeding, the Petitioners have done so in related Section 1782 proceedings, and
 2 the Company has intervened in those actions, in each case, expressly taking no position
 3 as to the propriety of Section 1782 discovery. This is consistent with recent decisions
 4 from Cayman Islands appraisal cases, decisions of other U.S. courts finding that Cayman
 5 courts are receptive to Section 1782 evidence, and decisions of courts across the country
 6 in related Section 1782 proceedings, which have found that this Cayman court is receptive
 7 to Section 1782 discovery for this Appraisal Proceeding.
 8
 9

10 *Third*, the Application is not concealing any improper attempt to circumvent any
 11 foreign discovery restrictions on proof gathering. *Intel*, 542 U.S. at 264. The requested
 12 discovery does not implicate any privilege or special protection that would make it
 13 improper under Cayman Islands law.
 14

15 *Fourth*, the proposed discovery is not unduly burdensome. *Id.* To the contrary,
 16 the subpoena is narrowly tailored to seek information directly relevant to the critical
 17 issues in the Appraisal Proceeding—namely testimony from Respondent about the Buyer
 18 Group’s negotiation and consummation of the Merger. Depositions are frequently
 19 granted under Section 1782.
 20

21 **II. FACTUAL BACKGROUND**

22 **i. Parties to the Foreign Proceeding**

23 Petitioners are funds that invested in 58.com and owned 58.com shares
 24 immediately before the effective date of the Merger that is the subject of Appraisal
 25 Proceeding. *See* Declaration of Marc Kish in Support of Petitioners’ Application (“**Kish**
 26 **Decl.**”) ¶ 13. Petitioners are respondents in the Appraisal Proceeding. *Id.* ¶ 13. Before
 27 the Merger, 58.com—China’s largest online classifieds business—was a publicly traded
 28

1 corporation incorporated in the Cayman Islands. *Id.* ¶ 14. The Company’s American
2 Depository Shares (“ADS”) were traded on the New York Stock Exchange. *Id.* ¶ 15.
3 Jinbo Yao, the Company’s CEO and founder, historically maintained significant control
4 over the voting shares of 58.com. *Id.* ¶ 16.

6 **ii. The Merger**

7 On June 15, 2020—three months after the world was plunged into the COVID-19
8 global pandemic, which had a temporary negative impact on the demand for the
9 Company’s online classifieds services and thus its share price—the Company announced
10 that it had entered into a merger agreement through which 58.com would be acquired by
11 Mr. Yao along with a consortium of private equity funds (the “**Buyer Group**”). *Id.* ¶ 19.
12 In addition to Mr. Yao, the Buyer Group also included funds wholly owned and controlled
13 by Warburg Pincus and General Atlantic—two New York-based private equity firms—
14 along with Ocean Link Partners, a China-based private equity firm for which Mr. Zheng
15 is a director. As noted, through Mr. Yao, the Buyer Group collectively controlled over
16 44% of the Company’s voting shares as of August 7, 2020. *Id.* ¶ 20.

17 The announcement stated that on the effective date of the Merger, 58.com’s
18 publicly traded ADS—equity shares of a foreign company held by a U.S. depository bank
19 available for purchase by U.S. investors—would be canceled in exchange for the right to
20 receive \$56 per ADS. *Id.* ¶ 21. Under the terms of the Merger, 58.com was to become a
21 wholly owned subsidiary of a company called Quantum Bloom Group Ltd, which would
22 be beneficially owned by the Buyer Group, including Mr. Yao, Warburg Pincus, General
23 Atlantic, Ocean Link, and others.

1 The lead-up to the Merger announcement was characterized by a flawed process
2 designed to engineer the management buyout desired by Mr. Yao and his private equity
3 partners. On March 24, 2020, the Company engaged Kaihui Limited (“**Kaihui Limited**”)
4 as its consultant to explore strategic transactions. On April 2, 2020, Kaihui Limited
5 contacted Ocean Link; incredibly, that very evening, Ocean Link submitted a proposal to
6 acquire all the outstanding shares of the Company at \$55 per share, an offer clearly
7 designed to opportunistically capitalize on a temporary depression on 58.com’s trading
8 prices associated with the coronavirus outbreak, which immediately before, on January
9 16, 2020, were in excess of \$69 per share. The Company then decided to create a Special
10 Committee of independent board members, which would be tasked with considering the
11 Merger. However, there were no independent board members at the time. The Company
12 consequently appointed two new board members: Li (Lily) Dong and Robert Frank
13 Dodds, Jr. who, together, comprised the entire Special Committee.

14 Other features of the Merger process give rise to significant concern. The Special
15 Committee treated Kaihui Limited as its advisor and agent throughout its negotiations
16 with the Buyer Group, even though Kaihui Limited was hired by the same members of
17 the Company’s management that would later propose the transaction as part of the Buyer
18 Group. No effort was undertaken to shop the Company to competing bidders to ensure
19 that 58.com shareholders received maximum value for their shares. Ultimately, the
20 Special Committee and the Buyer Group agreed to a purchase price of \$56 per share, but
21 only after removing a critical protection that would have required approval by a majority
22 of the minority shareholders (the “**MoM Condition**”) to protect minority shareholder
23 rights, making the approval of the transaction almost certain regardless of support from
24
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28

1 the minority shareholders. As previously noted, the Buyer Group that took 58.com
2 private collectively held 44% of the Company's voting shares, and other principal
3 shareholders (who collectively held 28% of the Company's voting power) were
4 incentivized to vote for the Merger because they were not required to exchange their
5 shares for the inadequate Merger consideration (i.e., their shares were rolled over into the
6 merged company). Thus, the controlling shareholders were able to impose the Merger on
7 minority shareholders without their consent. The negotiation process took only 74 days,
8 and the price negotiation only lasted 10 days, a staggeringly rushed timeline designed to
9 undervalue the Company and squeeze out minority shareholders.

12 Although minority shareholders expressed concern about the deal, on September
13 7, 2020, the Company held an extraordinary general meeting of shareholders (the
14 "EGM"), at which time 58.com shareholders voted on whether to approve the Merger.
15 Kish Decl. ¶ 28. Only 15% of all shareholders that were unaffiliated with either the Buyer
16 Group or the Rollover Shareholders voted in favor of the transaction. Despite widespread
17 opposition from the unaffiliated shareholders, the transaction was forced through.
18 Accordingly, Petitioners' shares and the shares of all remaining stockholders—other than
19 Members of the Buyer Group—were canceled in exchange for the Merger consideration
20 effective September 17, 2020, at a price Petitioners allege is substantially below their fair
21 value. *Id.* ¶ 29.

25 As alleged in the Appraisal Proceeding, the Merger price significantly undervalued
26 58.com shares, was the result of a significantly flawed process, and was coercive and
27 unfair to 58.com's minority shareholders.
28

1 **iii. Petitioners’ Cayman Islands Appraisal Proceeding**

2 Under Section 238 of the Companies Act, the Cayman Court in the Appraisal
 3 Proceeding has a statutory obligation to determine the fair value of the dissenting
 4 shareholders’ shares. As described in the declaration of Justice Mangatal, the parties to
 5 the Appraisal Proceeding—including the Petitioners and 58.com—will submit evidence,
 6 expert testimony, and legal briefs to the Cayman Court, which will weigh the evidence
 7 and determine the fair value of Petitioners’ shares. *See* Mangatal Decl. ¶ 18. In assessing
 8 fair value in a Cayman Islands Appraisal Proceeding, the Cayman Court will examine the
 9 fairness (or lack thereof) of the process that led 58.com’s board to approve the Merger.
 10 In doing so, the Cayman Court will consider the fairness of the Merger to 58.com’s
 11 minority stockholders and will likely focus on, among other things, the process by which
 12 the 58.com board and/or Special Committee negotiated and approved the Merger price,
 13 and the valuations relied upon by the 58.com Special Committee and the Buyer Group.

14 **iv. Discovery in the Cayman Islands Appraisal Proceeding**

15 There is no automatic right to discovery in Section 238 proceedings similar to pre-
 16 trial discovery in the United States. Instead, only upon Court order is a party to the
 17 proceeding required to provide discovery of “documents which are in their possession,
 18 custody or power relating to any matter in question between them in the action.”
 19 Mangatal Decl. ¶ 32 (citing Grand Court Rules (“GCR”) Order 24 rule 3). Discovery of
 20 non-parties, particularly those like Respondent that are outside the Court’s jurisdiction, is
 21 very limited, subject to cumbersome procedures, and rarely used. *Id.* ¶ 43. The discovery
 22 process in the Appraisal Proceeding is ongoing. Kish Decl. ¶ 12.

Nevertheless, Cayman Courts remain receptive to evidence obtained through other judicial measures such as 28 U.S.C. § 1782. Indeed, as explained by Justice Mangatal, “Cayman courts have had the opportunity to consider specifically the use of 28 U.S.C. § 1782 in connection with Cayman Islands proceedings and have held that it is permissible for a litigant in a Cayman Islands proceeding to exercise any rights it may have under 28 U.S.C. § 1782 to obtain relevant evidence for use in proceedings in the Cayman Islands.” *Id.* ¶ 55. All relevant evidence obtained through this Application, other than that for which privilege can be asserted, will be admissible in the Cayman Court. *Id.* ¶ 53. Furthermore, Cayman Islands courts expect the parties to obtain the evidence they believe is necessary to prosecute their case. *Id.* ¶ 66. There is no requirement to obtain permission from a Cayman Islands court before seeking relevant evidence abroad in the U.S. under 28 U.S.C. § 1782. *Id.* And indeed, the court order that governs discovery in the Appraisal Proceeding (the “**Directions Order**”) contains a provision that expressly contemplates the use of Section 1782. *See* Kish Decl., Ex. B ¶ 50.

v. **Respondent and the Discovery Sought**

Respondent was involved in the Merger in at least two capacities. First, Respondent himself was a member of the Buyer Group that brought the Company private through the Merger. As described in the Proxy Statement, Respondent was one of the “Ocean Link Filing Persons” and a member of the Buyer Group. Proxy at i. Second, the Proxy Statement also explains that Respondent “owns 50% equity interest in Ocean Link GP,” which “is the general partner of Ocean Link Partners,” one of three private equity funds that was a member of the Buyer Group. Proxy at 2. Respondent is also a director of Ocean Link GP. Proxy at E-8. The Ocean Link website describes Respondent as one

1 of only a few members of its “senior leadership.” Loft Decl. Ex. 5 (screen capture of
2 Ocean Link website).

3 Ocean Link played a critical role in the Merger. Ocean Link made the original
4 proposal to take the Company private. Proxy at 26. Ocean Link also solicited other
5 members of the Buyer Group, including private equity funds General Atlantic and
6 Warburg Pincus. Proxy at 27 (“representatives of each of Warburg Pincus and General
7 Atlantic expressed to representatives of Ocean Link their interest in engaging in
8 discussions to explore the possibility of participating in the transaction”). Throughout the
9 negotiation process, representatives of Ocean Link, which may have included
10 Respondent, engaged in frequent discussions with representatives of the Company, other
11 members of the Buyer Group, potential lenders that indicated interest in participating in
12 the Merger, among others. Proxy at 27–29. Ocean Link also engaged in extensive
13 discussions with Kaihui Limited, the Company’s advisor,² including even before Ocean
14 Link submitted its proposal. *See, e.g.*, Proxy at 27 (“representatives of KL reviewed the
15 Original Proposal with the Board and described discussions between representatives of
16 KL and Ocean Link prior to the submission of the Original Proposal”).

17
18
19 **III. ARGUMENT**

20 Section 1782 of Title 28 of the United States Code permits U.S. district courts to
21 grant discovery for use in a pending foreign proceeding or a foreign proceeding. *Intel*
22 *Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 243 (2004). A Section 1782
23 application must satisfy three “modest prima facie elements”: (1) the discovery is sought
24 from someone who resides or is found within the District; (2) the discovery is for use
25
26

27
28 ² Another court in this Circuit recently granted discovery under Section 1782 in connection with the Appraisal Proceeding from Christopher Hsu, the principal of Kaihui.

before a foreign tribunal; and (3) the applicant is an “interested person.” *In re Credit Suisse Virtuoso SICAV-SIF in Respect of Sub-Fund Credit Suisse (Lux) Supply Chain Fin. Fund*, No. MC-21-00051-PHX-DWL, 2022 WL 1265919, at *2 (D. Ariz. Apr. 28, 2022). If these statutory requirements are met, the court then considers four discretionary “*Intel*” factors. *Intel*, 542 U.S. at 264–65.

a. **The Application Satisfies the Three Statutory Requirements of 28 U.S.C. 1782.**

Petitioners satisfy the three threshold statutory requirements of Section 1782.

A. **Respondent “Resides” or Is “Found in” this District.**

The first statutory requirement is satisfied when the respondent “resides or is found” in the District. *See, e.g., In re PJSC Uralkali for an Ord. Pursuant to 28 U.S.C. § 1782*, No. C18-1673JLR, 2019 WL 291673, at *3 (W.D. Wash. Jan. 23, 2019) (holding first statutory factor was satisfied because respondent “maintains a residence in this district”). According to a licensed private investigator’s database search, Respondent is a “current resident” of a home in this District, which Respondent purchased in 2021. Burtis Decl. ¶ 3. Aside from being listed as a “current resident” of this District, Respondent is also the sole Member of Zheng Family LLC, an active Arizona-registered company. *Id.*

Respondent thus “resides or is found” in this District.³

³ Alternatively, Respondent is “found in” this District. There does not appear to be binding precedent in this District on whether the “resides or is found” language in Section 1782 means the court must have personal jurisdiction over the party from whom Petitioners seek discovery. However, courts in other jurisdictions have found that Section 1782’s statutory prerequisite is coextensive with personal jurisdiction. *See, e.g., In re del Valle Ruiz*, 939 F.3d 520, 528 (2d Cir. 2019) (“We hold, accordingly, that § 1782’s ‘resides or is found’ language extends to the limits of personal jurisdiction consistent with due process.”). This Court has general personal jurisdiction over Respondent. General

i. **The Discovery Sought Is “For Use” In a Foreign Proceeding.**

To establish that the information sought is “for use” in a foreign proceeding, Petitioner must merely show that it has “the procedural right to submit the requested documents to” the foreign tribunal. *In re Accent Delight Int’l Ltd.*, 869 F.3d 121, 132 (2d Cir. 2017). A Section 1782 petitioner is not required to demonstrate that the information sought would be discoverable or admissible in the foreign proceedings. *In re Request for Judicial Assistance from the Seoul Dist. Criminal Court*, 555 F.2d 720, 723 (9th Cir. 1977) (“[F]ederal courts, in responding to [§ 1782] requests, should not feel obliged to involve themselves in technical questions of foreign law relating to . . . the admissibility before [foreign] tribunals of the testimony or material sought.”). Instead, the district court considers “the *practical ability* of an applicant to place a beneficial document—or the information it contains—before a foreign tribunal.”). Petitioners have already relied upon evidence from related Section 1782 proceedings in the Appraisal Proceeding, and the discovery process in the Appraisal Proceeding is ongoing. Kish Decl. ¶¶ 39–40. The Requested Discovery is therefore plainly “for use” in the Appraisal Proceeding, and Petitioners have thus satisfied the second statutory requirement.

ii. **Petitioners Are “Interested Persons.”**

“Litigants are included among, and may be the most common example of, the ‘interested person[s]’ who may invoke § 1782.” *Intel*, 542 U.S. at 256; *In re Pioneer*

jurisdiction can be established by an individual’s domicile, *Facebook, Inc. v. Banana ADS LLC*, No. CV 11–03619–YGR (KAW), 2013 WL 1873289, at *3 (N.D. Cal. Apr. 30, 2013) or, in the alternative, his or her “continuous and systematic” contacts with the forum. *In re Wireless Facilities, Inc. Derivatives Litig.*, 562 F. Supp. 2d 1098, 1102 (S.D. Cal. 2008).

1 *Corp. v. Technicolor, Inc.*, No. LA CV18-04524 JAK (SSx), 2018 WL 4961911, at *5
 2 (C.D. Cal. Sept. 12, 2018) (“An ‘interested person’ includes, but not limited to, parties in
 3 a foreign proceeding.”) (citing *Intel*, 542 U.S. at 256). Because Petitioners are claimants
 4 in the Appraisal Proceeding, Kish Decl. ¶ 34, they are “interested persons.” All of the
 5 statutory elements are thus satisfied here.
 6

7 **b. The *Intel* Discretionary Factors Weigh in Favor of Granting Discovery.**
 8

9 Once the statutory threshold requirements of Section 1782 are met, a district court
 10 considers, in its discretion, whether to order the requested discovery. To do this, the
 11 district court looks to the four “*Intel* factors.” See *Intel*, 542 U.S. at 264. Each of the
 12 *Intel* factors is discussed below and weighs in favor of granting the Application.
 13

14 **A. Respondent Is a Non-Participant in the Appraisal Proceeding.**

15 The first *Intel* factor asks whether the party from whom discovery is sought is a
 16 party to the foreign proceeding. The reason for this inquiry is because “when the person
 17 from whom discovery is sought is a participant in the foreign proceeding . . . the need for
 18 § 1782(a) aid generally is not as apparent as it ordinarily is when evidence is sought from
 19 a nonparticipant in the matter arising abroad.” *Intel*, 542 U.S. at 264. Respondent is not
 20 a party in the Appraisal Proceeding, and therefore will not be subject to party discovery
 21 in the Appraisal Proceeding. Mangatal Decl. ¶ 42. Further, because Respondent does not
 22 reside in the Cayman Islands, the Cayman Court will not have jurisdiction to compel
 23 discovery from him. *Id.* Petitioners, therefore, will not be able to take discovery of
 24 Respondent through the Appraisal Proceeding, even though his testimony may be crucial
 25 to the issues in that proceeding. Accordingly, this first *Intel* factor weighs in favor of
 26 granting the Application. *In re Nouvel, LLC*, No. 2:22-MC-00004-MCS-E, 2022 WL
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2901715, at *1 (C.D. Cal. July 22, 2022) (“some parties here are not party to the foreign litigation, and based on the parties’ submissions of expert testimony, the Court has some doubt that the requested discovery is or will become available in the foreign courts”); *In re Republic of Ecuador*, No. C-10-80225, 2010 WL 3702427, at *3 (N.D. Cal. Sept. 15, 2010) (“[Discovery target] is not a party in the international arbitration, and therefore this factor weighs in the [petitioner’s] favor.”).

i. **The Cayman Islands Court Is Receptive to the Requested Discovery.**

The second *Intel* factor requires courts to consider whether the “nature, attitude, and procedures” of the foreign tribunal indicate that it is receptive to Section 1782 assistance. This factor “focuses on whether the foreign tribunal is willing to consider the information sought.” *In re Ex Parte Appl. Varian Med. Sys. Int’l AG*, No. 16-mc-80048-MEJ, 2016 WL 1161568, at *4 (N.D. Cal. March 24, 2016). There is a strong presumption that foreign tribunals will be receptive to evidence obtained in the United States. “[W]hen evaluating whether foreign tribunals would accept U.S. assistance,” courts do not look for proof that the foreign tribunal will accept the evidence; to the contrary, they “‘look for ‘authoritative proof that a foreign tribunal would *reject* evidence obtained with the aid of section 1782.’” *Siemens AG v. W. Digital Corp.*, No. 8:13-cv-01407-CAS-(AJWx), 2013 WL 5947973, at *3 (C.D. Cal. Nov. 4, 2013) (quoting *Euromepa, S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095 (2d Cir. 1995)) (emphasis in original). Absent “*authoritative proof* that a foreign tribunal would reject evidence obtained with the aid of section 1782,” courts are to “err on the side of permitting discovery.” *Varian Med. Sys.*, 2016 WL 1161568, at *4 (emphasis added). As numerous courts across the country have held, Cayman Islands courts, and the Cayman court in the Appraisal

Proceeding in particular, are receptive to discovery under Section 1782.⁴ The receptivity of the Cayman Court to evidence obtained through this Application will be no different.

ii. **Petitioners Are Not Circumventing Foreign Proof-Gathering Restrictions.**

The third *Intel* factor looks to “whether the § 1782(a) request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States.” *Intel*, 542 U.S. at 265. Importantly, the third *Intel* factor is satisfied unless the foreign court actively prohibits the petitioner from gathering the information sought. *In re Koninklijke Philips N.V.*, No.: 17-MC-1681-WVG, 2018 WL 620414, at *2 (S.D. Cal. Jan. 30, 2018); *Brandi-Dohrn v. IKB Deutsche Industriebank AG*, 673 F.3d 76, 82 (2d Cir. 2012); *Intel*, 542 U.S. at 261 (“A foreign nation may limit discovery within its domain for reasons peculiar to its own legal practices, culture, or traditions—reasons [that] do not necessarily signal objection to aid from United States federal courts.”); *Siemens AG*, 2013 WL 5947973, at *3. Moreover, “an applicant need not attempt to

⁴ See also *In re Platinum Partners Value Arbitrage Fund L.P.*, 583 B.R. 803, 816 (Bankr. S.D.N.Y. 2018) (“Liquidators present un rebutted evidence that, far from being hostile to Cayman litigants seeking evidence under U.S. law, Cayman courts are in fact receptive to evidence obtained through U.S. discovery procedures, even if such evidence may not be discoverable under Cayman law.”); *Gushlak v. Gushlak*, 486 F. App’x 215, 218 (2d Cir. 2012) (affirming use of Section 1782 applications in connection with Cayman divorce proceedings); *Ahmad Hamad Algosaibi & Bros. Co. v. Standard Chartered Int’l (USA) Ltd.*, 785 F. Supp. 2d 434, 439 (S.D.N.Y. 2011) (granting Section 1782 applications seeking documents for use in Cayman proceedings); *In re Penner*, 2017 WL 5632658, at *3 (D. Mass. Nov. 22, 2017) (finding that the Cayman Court “is open to receiving § 1782 discovery”). Indeed, two district courts recently granted 1782 petitioners’ applications for both document discovery and a deposition for use in an appraisal proceeding in the Cayman Islands. See *In re Application of Athos Asia Event Driver Master Fund*, No. 4:21-MC-00153-AGF, 2021 WL 1611673, at *1 (E.D. Mo. Apr. 26, 2021) (“There is no indication in the record here that a discovery order would be unwelcome by the Cayman Islands court.”); *In re Application of Athos Asia Event Driven Master Fund*, No. 1:21-MC-00208-GBF, ECF 8 (S.D.N.Y. Mar. 3, 2021) (granting 1782 petition for discovery for use in Cayman appraisal proceeding).

1 exhaust the discovery procedures available in the foreign court before invoking section
 2 1782 in federal court.” *In Re Ex Parte Application of Nouvel, LLC*, No. 22-MC-0004-
 3 MCS(EX), 2022 WL 3012521, at *4 (C.D. Cal. June 8, 2022), *report and*
 4 *recommendation adopted*, 2022 WL 2901715 (C.D. Cal. July 22, 2022). The discovery
 5 sought does not attempt to circumvent any proof-gathering restrictions in the Cayman
 6 Islands. To the contrary, as Justice Mangatal explains, “Cayman courts expect the parties
 7 to obtain the evidence they believe is necessary to prosecute their case” and “[t]hus there
 8 is no requirement to obtain permission from a Cayman court before seeking relevant
 9 evidence abroad.” Mangatal Decl. ¶ 66.

11 **iii. The Subpoena Is Not Unduly Burdensome.**

12 The final *Intel* factor looks to whether the discovery requests are “unduly intrusive
 13 or burdensome.” *Intel*, 542 U.S. at 265. “The scope of discovery permitted under § 1782
 14 is coextensive with the scope of discovery permitted by Federal Rule of Civil Procedure
 15 26(b)(1).” *In re Bayerische Motoren Werke AG*, No. MC-22-00016-PHX-SPL, 2022 WL
 16 1092804, at *2 (D. Ariz. Apr. 12, 2022) (holding discovery requests that were “quite
 17 broad” were nonetheless “proportional to the needs of the case” and “within the scope of
 18 discovery permitted under § 1782”). The Application seek testimony within the personal
 19 knowledge of Respondent that is relevant to the Merger, which is expressly provided for
 20 in Federal Rule of Civil Procedure 45. “[T]he Rules of Civil Procedure themselves ensure
 21 that the length, time and place of the deposition do not impose an undue burden.”
 22 *HRCHainan Holding Co., LLC v. Yihan Hu*, No. 19-mc-80277-TSH, 2020 WL 906719,
 23 at *15 (N.D. Cal. Feb. 25, 2020). For that reason, courts in this Circuit routinely hold that
 24 depositions of third parties are not unduly burdensome. *See, e.g., Stockinger v. Toyota*
 25 *Motor Sales, U.S.A., Inc.*, No. 18MC00084VAPKSX, 2018 WL 6517106, at *2 (C.D.

1 Cal. Aug. 15, 2018) (“Mrs. Casper has provided no evidence that her deposition would
2 impose an undue burden on her, other than the mere assertion that this would be so. Thus,
3 this Court finds that the relevance of Mrs. Casper’s independent knowledge to the claims
4 and defenses in the Stockinger Action outweighs any potential burden.”); *TS Prod., Inc*
5 *v. Champion Fiberglass, Inc.*, 309 F.R.D. 527, 532 (N.D. Cal. 2015) (denying motion to
6 quash Rule 45 subpoena seeking deposition testimony); *Universal Church, Inc. v.*
7 *Standard Constr. Co. of San Francisco, Inc*, No. 14-CV-04568-RS (KAW), 2015 WL
8 6167968, at *4 (N.D. Cal. Oct. 21, 2015) (“Defendants’ contentions that the deposition is
9 irrelevant and harassing also lack merit. Plaintiff explains that they seek to depose Teague
10 regarding the knowledge and observations he obtained during his investigation This
11 is relevant to the claims asserted in this case.”).

12 As a member of the Buyer Group and the director and 50% equity owner of another
13 member of the Buyer Group, Respondent has personal knowledge of the key issues in the
14 Appraisal Proceeding. That evidence is proportional to the needs of the Appraisal
15 Proceeding, a multi-billion dollar dispute.

16 Moreover, Petitioners are willing to meet and confer with Respondent to address
17 any burden concerns. If the Court has remaining concerns about undue burden, granting
18 the Application will not preclude Respondent from bringing a motion to quash or modify
19 the discovery sought. If the Court finds merit to such objections, “it is far preferable for
20 a district court to reconcile whatever misgivings it may have about the impact of its
21 participation in the foreign litigation by issuing a closely tailored discovery order rather
22 than by simply denying relief outright.” *Euromepa, S.A. v. R. Esmerian, Inc.*, 51 F.3d
23 1095, 1101 (2d Cir. 1995).

1 **IV. CONCLUSION**

2 For the foregoing reasons, Petitioners respectfully request that the Court grant the
3 Application for an order pursuant to 28 U.S.C. § 1782.
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5 Dated: December 8, 2022
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7 By: /s/ Thomas A. Gilson
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18 **Pro hac vice* applications forthcoming
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